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No. 71-1525
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

RAYMOND HOULE, ET AL
PETITIONERS

v.

ROBERT M. DUVALL,
COMMISSIONER OF LABOR
FOR THE STATE OF NEW HAMPSHIRE
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Whether record supports petitioners' claim that the Supreme Court of New Hampshire based its decision on unsupported allegations in respondent's brief so as to deprive petitioners of due process of law.

CONSTITUTIONAL PROVISION INVOLVED

U.S. CONST. XIV sec. 1.: "... nor shall any state deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT

This litigation concerns the activities of hairdressing students in beauty schools. Wage claims were filed pursuant to N. H. RSA 275 by six students of a beauty school with the New Hampshire Department of Labor seeking to enforce the provisions of "Mandatory Order No. 4-A," issued by the State Labor Commissioner, pursuant to the minimum wage law RSA 279. "Mandatory Order No. 4-A," promulgated in 1938, requires beauty schools to pay a beauty student fifty percent of the charge made for student's services when working on paying customers.

A petition was brought by petitioners in Superior Court to challenge the validity of "Mandatory Order 4-A." The case was submitted on an agreed statement of facts and

and the trial court ruled in favor of the petitioners. The trial court reserved and transferred to the New Hampshire Supreme Court respondent's exceptions, which exceptions were sustained reversing the trial court's ruling.

Subsequently to the decision of the New Hampshire Supreme Court, petitioners filed a motion for rehearing based upon the grounds that there was no evidence in the record on the basis of which the ruling in favor of respondent could be made.

The State Supreme Court, in answer to petitioners' motion, modified its opinion in clarifying the status of beauty school students in accordance with "Mandatory Order 4-A." That Court's opinion answered petitioners' complaint by incorporating certain agreed facts in the opinion and concluding that the New Hampshire Labor Commissioner could properly consider the jurisdiction over and classification of

beauty students within the meaning of the state's minimum wage law.

After modification of the original opinion, the State Court denied the motion for rehearing and petitioners again moved for a rehearing on basically the same grounds as the original motion. Petitioners' second motion for rehearing was consequently denied.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT SHOULD BE DENIED BECAUSE:

1. PETITIONERS MISCONCEIVED THE DECISION OF THE NEW HAMPSHIRE SUPREME COURT.

The opinion of the New Hampshire Supreme Court proceeds on the analysis of "Mandatory Order 4-A," which is an order of the Labor Commissioner pursuant to the minimum wage law of the State RSA 279. The constitutionality of the order and statute is not at issue before this Court. The only issue is whether or not there was adequate facts in the record to support the New Hampshire Supreme

Court opinion. Since the Supreme Court of New Hampshire merely found that the Labor Commissioner, pursuant to RSA 279, had jurisdiction under state statutes to issue "Mandatory Order 4-A," no federal question is involved. Essentially, petitioners' contention as to the facts in this case would not alter the classification of beauty students and the effects of their working on paying customers as defined in this State's minimum wage statute. The New Hampshire Supreme Court found as a matter of law that the Labor Commissioner had jurisdiction to issue "Mandatory Order 4-A." The record of the State Court decision is thus that students could properly be considered by the Labor Commissioner, as the fact-finder, to be gainfully employed. Petitioners insist, however, that implicit in arguments raised by respondent there lurks an important question of Federal law which this Court

should settle. The complaint of due process infringement raised by petitioners is the result of apparent dissatisfaction in the outcome of the decision and is not based on any question within the meaning of Rule 19 (1) (a) of the Rules of this Court.

2. THE AGREED FACTS ARE NOT IN DISPUTE BUT, EVEN IF CONSIDERED DISPUTABLE, THIS COURT SHOULD NOT REVIEW STATE COURT FINDINGS AND CONCLUSIONS OF FACT.

The issue of denial of due process as the result of allegations claimed to be unsupported by the record is a frivolous assertion which does not warrant review by this Court on certiorari in this case. Petitioners have assiduously attempted to create the impression that the agreed statement of facts does not support the statements contained in respondent's State Court brief and of the New Hampshire Supreme Court's ruling.

The agreed statement of facts, signed and agreed to by both litigants, was sub-

mitted to the trial court with the full understanding of the parties of what it contained. The record discloses that the State Court, in answer to objections raised by petitioners in their motion for rehearing, modified its opinion to include the supportive evidence found in the agreed facts. Non-reviewability of State Court findings and conclusions of fact is the general rule governing jurisdiction of this Court and nothing propounded by petitioners brings this case within any recognized exceptions. Fry Roofing Co. v. Wood, 344 U.S. 157, 160.

Hence, conclusions of fact reasonably found by the New Hampshire Supreme Court do not involve a federal question. Citation to Fourteenth Amendment authority is consequently not on point to any issue germane to this case.

3. PETITIONERS' STATE COURT BRIEF, ON ITS FACE, SUPPORTS THE DECISION BELOW AS CLEARLY CORRECT.

Petitioners argue that the parties did

not agree that students had worked on paying customers without compensation and that there is nothing in the record to support it. Clearly within the agreed statement of facts there may be found the following: "The basis of the wage claims was that the students had worked on paying customers and had not received any compensation for this." The claim by petitioners that the foregoing statement was taken out of context by the State Court is unrealistic and unfounded in light of petitioners' own admissions and declarations in their state brief:

> "The students here concerned are students who pay tuition to the schools in order to learn the occupation of a beautician or hairdresser. As a part of their training they are allowed to work under supervision on paying customers, ... who pay a reduced rate for the services ...." [Emphasis added]. (Petitioners' N. H. Supreme Court Brief, page 14).

"Mandatory Order 4-A" provides in part that beauty students enrolled in registered schools who work on paying customers will

receive fifty percent of the charge made for the service. The decision of the New Hampshire Supreme Court merely upheld the validity of "Mandatory Order 4-A." As shown above, petitioners' own admissions to the fact that beauty students worked on paying customers, coupled with the agreed statement signed by both parties and relating to non-payment of wages to claimants, contradicts their position before this Court. Therefore, the New Hampshire Supreme Court decision in the present case is clearly correct. Manifestly, petitioners' attacks against counsel for respondent and against the State Court are irrelevant on the merits of this case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition

for Writ of Certiorari should be denied.

Respectfully submitted,

The State of New Hampshire

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and

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June 22, 1972